

Supreme Court, U. S.

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**In the
Supreme Court of the United States**

OCTOBER TERM, 1977

NO. **77-1235**

LAKE LIVINGSTON WASHATERIA, INC., AND
LAKE LIVINGSTON WASHATERIA, ELIJAH W.
RATCLIFF, PROPRIETOR,

Petitioners

versus

ED HASTY AND METALLIC BUILDING
COMPANY,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT

ELIJAH W. RATCLIFF
P.O. Box 862
Livingston, Texas 77351
Phone: 713 327-4948

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NO.

LAKE LIVINGSTON WASHATERIA, INC.,
AND LAKE LIVINGSTON WASHATERIA,
ELIJAH W. RATCLIFF, PROPRIETOR,
Petitioners

versus

ED HASTY AND METALLIC BUILDING COMPANY,
Respondents

PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE WARREN E. BURGER, CHIEF
JUSTICE, AND THE JUSTICES OF THE SUPREME
COURT OF THE UNITED STATES:

OPINIONS BELOW

The United States District Court for the Southern District of Texas, Houston Division, under CA No. 73-H-875, entered a Memorandum and Order on the 27th day of July, A.D., 1977, and a Final Judgment on the 29th day of July, A.D., 1977, dismissing the cause of action upon which this review is based. Both plaintiffs, Complainant and Intervenor, in such action properly appealed against both defendants, Respondents, to the United States Court of Appeals for the Fifth Circuit which Court of Appeals affirmed the United States District Court on the 29th day of December, A.D., 1977, under docket No. 77-2769.

The decisions of the lower courts are not reported, but copies of the Memorandum and Recommendation and the Final Judgment of the United States District Court as well as the Order of the United States Court of Appeals are attached hereto as Appendix A.

JURISDICTION

The United States District Court judgment was in the form of a Memorandum and Recommendation rendered and filed on the 27th day of July, A.D., 1977, and a Final Judgment rendered and filed on the 29th day of July, A.D., 1977, by Judge John V. Singleton, Jr., adopting such Memorandum and Recommendation.

The Final Judgment of the United States District Court was affirmed by an unpublished Order of the United States Court of Appeals for the Fifth Circuit on the 29th day of December, A.D., 1977.

No motion for rehearing or extension of time prerequisite to this Petition for Writ of Certiorari have been presented.

Authority for the Supreme Court of the United States to grant the relief sought hereby derives through *Title 28, United States Code, Section 1254(1)* and consistent with *Title 28, United States Code, Section 2101(c)*. Such jurisdiction is supported by *Title 28, United States Code, Sections 1343, 1443, 1446, 1447(d), 1651, 1652 and 2072*, as well as *Title 42, United States Code, Sections 1981-1995*, inclusive, and *United States Code, Const. Amend. V, VIII, XIII, XIV and XV*.

The proceeding is a civil rights action in nature arising out of conduct by Respondents through violence and threats of violence in trespassing upon and fostering trespasses upon premises belonging to Petitioners at Onalaska, Polk County, Texas which held homestead status under the Constitution and laws of the State of Texas. *Vernon's Ann. Civ. St., Art. 3833, 3835 and 3836, Vernon's Ann. St. Const., Art. XVI, §§50 and 51; Title 28, United States Code, Section 1652; Title 42, United States Code, Sections 1981, 1982 and 1983.*

QUESTIONS PRESENTED

1. Whether the Complaint and the First Amended Complaint by Intervention filed in the subject action stated a cause of action upon which relief may be granted.
2. Whether default judgment against Respondent Ed Hasty was the proper sanction for his refusal to honor procedural prescriptions of the State and Federal rules of procedure over a period of time exceeding three years.
3. Whether the subject premises at Onalaska, Polk County, Texas occupied homestead status in favor of the agent for Lake Livingston Washateria, Inc., or another holder of a possessory interest with such Respondent Corporation.
4. Whether the subject premises were exempt from foreclosure or judicial sale in the absence of an agreement in writing signed by Petitioners as its owners to pay for alleged improvements on such premises.
5. Whether the actions of Respondent Ed Hasty and his

employees in trespassing on Petitioners' premises at Onalaska, Polk County, Texas while threatening harm to the occupants with deadly weapons comprised a violation of such Petitioners' civil rights.

6. Whether Petitioners have now or at any time material to the instant litigation possessed a remedy which could be rationally and reasonably enforced through the State courts of Texas.

7. Whether summary judgment should have been granted in favor of one or both Petitioners against Respondent Ed Hasty because no genuine issue as to any material facts was presented with respect to the United States District Court.

8. Whether the failure of Respondent Metallic Building Company to comply within a reasonable time with its contract to properly construct a washateria building for Petitioners' predecessors entitled Petitioners to damages against such Respondents.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitutional bases upon which Petitioners rely in substance are *United States Code, Const. Amend. V, VIII, XIII, XIV and XV* which collectively are space consuming so their complete text is limited to the contents of Appendix B 2 to 4.

Underlying the Constitutional claim is *Vernon's Ann. St. Const., Art. XVI, §§ 50 and 51*, and related enabling statutes which control homestead status of realty in the State of

Texas, the text of which is similarly limited to Appendix B 39 to 40 and B 41 to 44. *Vernon's Ann. Civ. St., Art. 3833, 3835 and 3936; Vernon's Ann. St. Const., Art. XVI, §§ 50 and 51.*

The Federal jurisdictional claim asserted by Petitioners is set forth by *Title 28, United States Code, Sections 1343, 1443, 1446, 1447(d), 1449 and 1652 and Title 42, United States Code, Sections 1981-1995*, inclusive, in addition to *Federal Rules Civ. Proc., Rules 8(a), 12(c), 12(e), 33, 36 and 37(d); 55 and 56, 28 U.S.C.*, each of which is set forth verbatim at Appendix B. 5 to 38.

Standards of conduct related to other Texas statutory laws are non-jurisdictional and ancillary to this proceeding, and verbatim recitation of their contents appears inappropriate for this Petition. However, *V.T.C.A., Bus. & C., §26.01*, includes certain controlling standards applicable to the facts so its contents are included verbatim at Appendix B. 44 to 45.

STATEMENT OF CASE

The instant litigation arises out of civil rights violations engaged by Respondent Ed Hasty of Conroe, Montgomery County, Texas entering upon realty owned by Petitioners at Onalaska, Polk County, Texas under color of authority of State law inconsistent with Petitioners' rights to receive and hold realty assured and granted by *Title 42, United States Code, Sections 1981-1995*, inclusive, and *United States Code, Const. Amend. V, VIII, XIII, XIV and XV*.

The cause of action is permitted by *Title 28, United States Code, Sections 1343 and 1443*, and it is supported proximately by *Title 28, United States Code, Sections 1446, 1447(d), 1651 and 1652*, in addition to the relevant procedural authorities under *Section 2072* of such Title. *Stringer v Ditzer, 313 F.2d 541 (1963); Hornsby v Allen, 326 F.2d 605 (1964).*

The action was filed in the United States District Court

for the Southern District of Texas as a removal action and docketed as CA No. 72-H-1221 on the 8th day of September, A.D., 1972, at which point Respondent Metallic Building Company was not a party. *Title 28, United States Code, Section 1443*. The United States District Court refused to exercise jurisdiction of the removal proceeding, and a remand order was entered by Judge Carl O. Bue, Jr., on the 8th day of November, A.D., 1972.

It appears from the constructive admissions of Respondent Ed Hasty that the pending jurisdiction of the United States District Court was disregarded, and he proceeded on his design to deprive Petitioners of their realty previously referred to (Tr. Items 17 and 17b). *Vernon's Ann. Rules Civ. Proc., Rule 169; Federal Rules Civ. Proc., Rule 36, 28 U.S.C.; Gilbert v General Motors Corporation, 133 F.2d 997 (1943), cert. den. 319 U.S. 743, 87 L.Ed. 1700.*

Without knowledge of the specific activities and intentions of Respondents regarding the legal controversy, Petitioners contemplated that further interference with their property rights would be attempted. Therefore, injunctive relief was sought from the United States District Court for the Southern District of Texas, CA No 73-H-875, without joining Respondent Metallic Building Company as an initial party (Tr. Item 1). *Title 28, United States Code, Sections 1343 and 1447(d); Tolg v Grimes, 355 F.2d 92 (1966), cert. den. 384 U.S. 988, 16 L.Ed. 2d 1005.*

A delay of two months occurred between the date the Complaint was presented in April, 1973, until it was filed for processing on June 25, 1973, while the United States District Court considered the merits of filing it, in spite of

the fact Counsel for such Petitioner-Complainant was an attorney in good standing with the State Bar of Texas who had been admitted to practice before the subject United States District Court on the 23rd day of June, A.D., 1966 (See Appendix C). *Federal Rules Civ. Proc., Rule 4, 28 U.S.C.*

Petitioner Lake Livingston Washateria, Inc., served interrogatories on Respondent Ed Hasty on the 12th day of July, A.D., 1973, and served a Request for Admissions on such Respondent on the 10th day of November, A.D., 1973, but the subject Respondent defaulted with respect to the Request for Admissions and refused to answer the interrogatories over a period of time exceeding three years (Tr. Items 4 and 17a; and 17 and 17b). *Vernon's Ann. Rules Civ. Proc., Rules 168 and 169; Federal Rules Civ. Proc., Rules 33, 36 and 37(d), 28 U.S.C.*

After filing Affidavits of Homestead by interested citizens of Onalaska, Polk County, Texas on November 2, 1973, substantiating certain ones of the same factual elements covered by the interrogatories and Request for Admissions to Respondent Ed Hasty, Petitioner Lake Livingston Washateria, Inc., again sought relief in the form of a Motion for Summary Judgment with Notice on November 29, 1973 (Tr. Items 7, 10, 11 and 12). *Vernon's Ann. Rules Civ. Proc., Rule 215; Federal Rules Civ. Proc., Rules 37(d), 55 and 56, 28 U.S.C.; Michigan Window Cleaning Co. v Martino, 173 F.2d 466 (1949); Beckman v Walter Kidde & Company, 316 F. Supp. 1321 (1970).*

On March 16, 1977, after complications appreciated from the status of Petitioner Lake Livingston Washateria, Inc., as a franchised entity under the laws of the State of Texas, a

Motion for Leave to Appear and First Amended Complaint by Intervention was filed adding Petitioner Lake Livingston Washateria, Elijah W. Ratcliff, Proprietor, as a plaintiff (Tr. Items 15 and 16). *Federal Rules Civ. Proc.*, Rule 24(a), 28 U.S.C.

Such Petitioner-Intervenor proceeded to serve a Request for Admissions and interrogatories on Respondent Ed Hasty on March 26, 1977, to which such Respondent again defaulted and refused to answer as prescribed by the State and Federal rules of procedure (Tr. Items 17 and 17b). *Vernon's Ann. Rules Civ. Proc.*, Rules 168, 169 and 215; *Federal Rules Civ. Proc.*, Rules 33, 36, 37(d), 55 and 56, 28 U.S.C.; *Michigan Window Cleaning Co. v Martino*, 173 F.2d 466 (1949); *Beckman v Walter Kidde & Company*, 316 F.Supp. 1321 (1970); *Flaks v Koegal*, 504 F.2d 702 (1974); *Eisler v Stritzler*, 535 F.2d 148 (1976).

The various interrogatories to Respondent Ed Hasty solicited clarification of the relationship with respect to his conduct with that of Respondent Metallic Building Company pertinent to the facts so in the absence of clarification or a discovery order from the United States District Court, a Motion for Leave to File Petition to Implead Respondent and Petition to Implead Respondent were presented to such United States District Court on the 8th day of June, A.D., 1977 (Tr. Items 23 and 24). *Federal Rules Civ. Proc.*, Rule 19(a), 28 U.S.C.

The prevailing facts were that Respondent Ed Hasty made numerous intrusions and trespasses against Petitioners' premises at Onalaska, Polk County, Texas (Tr. Item 10). Young B. Smith, *Cases and Materials on Torts*, The Foundation

Press, Inc., (2d Ed. 1957), pp 75-87; *Kopka v Bell Telephone Co. of Pennsylvania*, 371 Pa. 444 (1932), 91 A. 2d 232; *Galigher v Jones*, 129 U.S. 193 (1889), 32 L. Ed. 658; *Mitchell v Texas Gulf Sulphur Company*, 446 F.2d 90 (1971). Such actions were taken under color of authority of State law while such conduct in fact violated the rights of Petitioners to receive and hold realty. *Vernon's Ann. Civ. St.*, Art. 3833, 3835 and 3836; *V.A.T.C., Bus. & C.*, § 26.01(6); *Vernon's Ann. St. Const.*, Art. XVI, §§ 50 and 51; Title 42, *United States Code*, Sections 1981, 1982 and 1983; *United States Code, Const. Amend. V and XIV*; *Reed v Siler*, 439 S.W. 2d 466 (1969).

Respondent Ed Hasty accompanied by other parties operating subordinate to him, the franchised representative of Respondent Metallic Building Company, utilized deadly weapons and threats of violence to force Petitioners' evacuation of the subject premises (Tr. Items 1, 4, 16, 17, 17a, and 17b), while influenced by knowledge that Petitioners possessed no remedy at law which the State courts of Texas would enforce to protect the vested rights of Petitioners (Tr. Items 1, 15 and 16). 29 *Am Jur 2d* § 59; 31 *C.J.S. Evidence* §§ 10,28 and 30; Title 42, *United States Code*, Sections 1981, 1982 and 1983.

Respondent Ed Hasty notoriously maintained his interference with the subject premises in violation of Petitioners' civil rights from the initial intrusion during the calendar year 1973 to the present time resulting in indolence and damages as set forth by Petitioners pleadings (Tr. Items 1, 15, 16, 23 and 24). *Vernon's Ann. Civ. St.*, Art. 3833, 3835 and 3836; *Vernon's Ann. St. Const.*, Art. XVI, §§ 50 and 51; Title 42, *United States Code*, Sections 1981, 1982 and 1983.

Federal questions were clearly raised by the pleadings of Petitioners (Tr. Items 1, 15, 16, 23 and 24), but the United States District Court erroneously dismissed the action for failure to state a claim upon which relief could be granted (Tr. items 37 and 38), and the United States Court of Appeals for the Fifth Circuit affirmed such judgment (Appendix A). *Federal Rules Civ. Proc.*, Rules 8(a), 12(c) and 12(e); *U.S. Sup. Ct. Rule 19(1)(b)*, 28 U.S.C.; *Helmets v Anderson*, 156 F.2d 47 (1946), affirmed 331 U.S. 461, 91 L.Ed. 616.

GROUND SUBSTANTIATING FEDERAL QUESTIONS

The Final Judgment entered by the United States District Court represents the precise inverse of indicated justice as Petitioners were entitled to a default of summary judgment against Respondent Ed Hasty as a matter of law. *Federal Rules Civ. Proc.*, Rules 12(c), 55 and 56(a), 28 U.S.C.; *Beckman v Walter Kidde & Company*, 316 F. Supp. 1321 (1970).

Such Respondent presented no evidence controverting the homestead claim by Petitioners, and the Final Judgment disregards the primary and ultimate Civil Rights evidence, and issues set forth by Appellants. *Federal Rules Civ. Proc.*, Rules 8(a), 12(c), 12(e), 55 and 56(a), 28 U.S.C.; Title 18, *United States Code*, Section 242; *Vernon's Ann. St. Constr.*, Art. XVI, §§ 50 and 51; *Conley v Gibson*, 355 U.S. 41 (1957), 2 L.Ed. 2d 80; *United States v Price*, 383 U.S. 787 (1966), 16 L.Ed. 2d 267.

While Petitioners pre-trial evidence had not linked Respondent Metallic Building Company concretely to the Civil Rights conspiracy against them, its liability to Petitioners under third party beneficiary principals was clearly invoked, and such Respondent suggested by the tone of its procedures

herein a role it played in the Civil Rights violations contrived by Respondent Ed Hasty. 17 *Tex Jur 2d* §§54 and 55; *Federal Rules Civ. Proc.*, Rules 55 and 56, 28 U.S.C.

ARGUMENT - DISCUSSION OF FACTS AND AUTHORITIES I

The pleadings of both Petitioners, Lake Livingston Washateria, Inc., and Lake Livingston Washateria, Elijah W. Ratcliff, Proprietor, set forth a cause of action against Respondents upon which relief may properly be granted, in accordance with Rules 8(a), 12(c) and 12(e), 55 and 56 *Federal Rules of Civil Procedure*. *Conley v Gibson*, 355 U.S. 41 (1957), 2 L.Ed. 2d 80; *Wisco Leasing, Inc., v Keller*, 490 F. 2d 545 (1974); *Westlake v Lucas*, 537 F.2d 857 (1976).

Jurisdiction of the United States District Court is based upon Title 28, *United States Code*, Sections 1343 and 1443, as the latter section is supported by the provisions of Title 28 *United States Code*, Section 1447(d), making Civil Rights removal actions reviewable by appeal or otherwise, and the cause of action alleged relied upon Title 42, *United States Code*, Section 1981-1994, inclusive, and *United States Code*, *Const. Amend. V, VIII, XIII, XIV and XV*, for its substance. *Helmets v Anderson*, 156 F.2d 47 (1946), affirmed 331 U.S. 461, 91 L.Ed. 616.

The evidence obtained and accumulated through pre-trial procedures was not as detailed and repetitious as trial would have produced, and the record as a whole depicts the preliminary and continuous lack of cooperation on the part of Respondent Ed Hasty with respect to Procedural and discovery efforts or otherwise facilitating a prompt disposition of the litigation.

Rule 8(a), Federal Rules of Civil Procedure, requires that a claim for relief shall contain a short and plain statement of the grounds upon which the Court's jurisdiction depends; a short and plain statement of the claim showing that the pleader is entitled to relief; and a demand for judgment including the relief to which he deems himself entitled (Tr. Items 1 and 16). These requirements were satisfied by the pleadings of both Petitioners. There is no requirement that Federal pleadings state facts, ultimate facts or facts sufficient to constitute a cause of action. Federal pleading is "notice" pleading. A generalized summary of the case that affords fair notice is all that is required. Lavine and Horning, *Manual of Federal Practice*, McGraw Hill Book Company § 3.7 (1967), page 243; *Nagler v Admiral Corporation*, 248 F.2d 319 (1957).

Title 28, United States Code, Section 1343, expressly vests the United States District Courts with jurisdiction of civil actions to redress the deprivation, under color of State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution or Federal statutes providing for equal rights of citizens or of all persons within the jurisdiction of the United States, *Title 42, United States Code, Section 1983*; *Graff v Nieberg*, 233 F. 2d 860 (1956); *Clausen & Sons, Inc., v Theo Hamm Brewing Co.*, 395 F.2d 402 (1968); *Dewell v Lawson*, 489 F.2d 877 (1974).

Thus, jurisdiction is clearly invoked by the pleadings of petitioners, and the refusal of the United States District Court to honor the jurisdiction suggests that it became confused by the dilatory tactics of Respondents throughout the record. *United States v Oregon State Medical Society*, 343 U.S. 333 (1951); *Monroe v Pope*, 365 U.S. 167 (1961).

ARGUMENT - DISCUSSION OF FACTS AND AUTHORITIES II

Default judgment against Respondent Ed Hasty was the proper remedy and sanction for his procedural deficiencies and neglect including his failure to answer interrogatories, respond to requests for admissions or present objections to either over an inconceivably unreasonable period of time. *Federal Rules Civ. Proc., Rules 33, 36, 37(d) and 55, 28 U.S.C.*

The first phase of this argument summarizes the framework of written interrogatories (Tr. Items 4 and 17a).

Where a party willfully fails to serve answers to interrogatories submitted pursuant to *Rule 33, Federal Rules of Civil Procedure*, after proper service of such interrogatories, the Court on motion and notice is authorized to strike out all or any part of any pleading of such party or enter a judgment by default against that party. Lavine and Horning, *Manual of Federal Practice*, McGraw-Hill Book Company § 5.230 (1967), page 529; *Federal Rules Civ. Proc., Rules 37(d) and 55, 28 U.S.C.*; *Smith v Schlesinger*, 513 F.2d 462 (1975).

If a party feels he should not answer interrogatories, he should take conventional and affirmative steps and not expose himself to an unintended judgment or order limiting proof because of his refusal. *Collins v Wayland*, 139 F.2d 667 (1944).

The second element of discovery which has been engaged in this proceeding is the request for admissions (Tr. Items 17 and 17b). This element is extremely valuable in preparing for trial in that it permits withdrawal of issues of fact from the trial by forcing the other party to admit such facts before

trial. A failure to admit or deny within the time prescribed constitutes an admission. Lavine and Horning, *Manual of Federal Practice*, McGraw-Hill Book Company §5.13 (1967), page 403; *Federal Rules Civ. Proc.*, Rule 36.

Unlike Rule 33, the language of Rule 36 does not require an order preliminary to legal effectiveness of request for admissions.

It is, furthermore, pertinent that the procedural and discovery inaction of Respondent Ed Hasty is violative of comparable State standards which allow a shorter time within which to demand a response from the party upon whom a request for admissions is served pursuant to Rule 169, *Texas Rules of Procedure*, and interrogatories are served pursuant to Rules 168, 215 and 239, *Texas Rules of Civil Procedure*. Title 28, *United States Code*, Section 1652; *Sams v New York State Board of Parole*, 352 F.Supp. 296 (1972); *Deras v Myers*, 535 F.2d 541 (1975); Title 42, *United States Code*, Sections 1981, 1982 and 1983; *Fleming v Simon*, 397 F. Supp. 1202 (1975); *Gonzales v Southern Methodist University*, 536 F.2d 1071 (1976).

Petitioner Lake Livingston Washateria, Inc. served interrogatories on Respondent Ed Hasty in compliance with Rule 33, *Federal Rules of Civil Procedure*, and with Rule 168, *Texas Rules of Civil Procedure*, on the 12th day of July, A.D., 1973 (Tr. Item 4). Such Petitioner, also, served a request for admissions on Respondent Ed Hasty in compliance with Rule 36, *Federal Rules of Civil Procedure*, and Rule 169, *Texas Rules of Civil Procedure*, on the 10th day of November, A.D., 1973 (Tr. Item 17).

Petitioner Lake Livingston Washateria, Elijah W. Ratcliff, Proprietor, served interrogatories and a request for ad-

missions on Respondent Ed Hasty in compliance with Rules 33 and 36, *Federal Rules of Civil Procedure* and Rules 168 and 169 on the 26th day of March A.D. 1977 (Tr. Items 17a and 17b).

However, such Respondent refused to answer the described interrogatories or respond to the indicated requests for admissions as prescribed by applicable law and did not specify any objection to either discovery effort which neglect warranted default and summary judgment upon the pleadings (Tr. Items 1, 6, 7, 15, 16 and 30). *Federal Rules Civ. Proc.*, Rules 12(c), 33, 36, 37(d), 55 and 56, 28 U.S.C.; *Vernon's Ann. Rules Civ. Proc.*, Rules 166-A, 168, 169 and 215; *McFaddin v Cecil Ruby Company*, 238 S.W. 2d 847 (1951); Title 28, *United States Code*, Section 1652; *Beckman v Walter Kidde & Company*, 316 F. Supp. 1321 (1970), affirmed 451 F.2d 593, certiorari denied 408 U.S. 922.

ARGUMENT - DISCUSSION OF FACTS AND AUTHORITIES III

The premises in question which served as the object of the intrusion by Respondent Ed Hasty held homestead status which was traced to the calendar year 1942 (Tr Items 1 and 10). *McKelroy v Hamilton*, 130 S.W. 2d 1114 (1939); *West v Austin National Bank*, 427 S.W. 2d 906 (1968).

The facts are that the premises obtained homestead status immediately following its purchase by J. W. Ratcliff from George Qualls on the 2nd day of September, A.D., 1942 (Tr. Item 10).

The premises were assigned to Lorenzo Ratcliff, the

brother of J.W. Ratcliff, without written agreement as head of the household including the parents of J.W. Ratcliff following the moving of J.W. Ratcliff and family to Corrigan, Polk County, Texas, during the calendar year 1950. No other homestead was elected by J.W. Ratcliff and family, and homestead status remained attached to the premises through the date of the intrusion by Respondent Ed Hasty herein. *Vernon's Ann. Civil St. Art. 3833, 3835, and 3836.*

The Texas Constitutional provision applicable to the rural homestead controlled the subject premises as the tract at Onalaska, Polk County, Texas was not within a town or city. *Vernon's Ann. St. Const., Art. XVI, § 51.* Of ancillary relevance, also, is the fact that the tract purchased by J.W. Ratcliff at Corrigan, Texas was not within a city, town or village, and when combined with the trail, both did not exceed two hundred (200 ac.) acres. Nor, for academic purposes, did they exceed the valuation limit defined by *Vernon's Ann. St. Const., Art. XVI, § 51. Huffman v Love, 494 S.W. 2d 591 (1973).*

Still further, no other realty acquired by the family of J. W. Ratcliff served to defeat or supercede the homestead status of the subject premises at Onalaska, Polk County, Texas. *West v Austin National Bank, 427 S.W. 2d 906 (1968); Hollifield v Hilton, 515 S.W. 2d 717 (1974).* Nor did the conveyance to Petitioner Lake Livingston Washateria, Elijah W. Ratcliff, Proprietor, on the 6th day of February, A.D., 1971, defeat or terminate the homestead character, being the son of J.W. Ratcliff Vernon's *Englander v Kennedy, 424 S.W. 2d 505 (1968); Williamson v Kelly, 444 S.W. 2d 311 (1969); Hollifield v Hilton, 515 S.W. 2d 717 (1974).*

The premises were utilized for the purpose of a home and a place to exercise the calling or business of the head of a family before and after the conveyance, and since homestead status was intended in each instance, no differentiation is applicable. *Vernon's Ann. Civ. St., Art., 3833(a) (2), 3835 and 3836; Title 28, United States Code, Sections 1343, 1443 and 1652; Title 42, United States Code, Sections 1982 and 1983; United States Code, Const. Amend. V, XIII and XIV.*

ARGUMENT - DISCUSSION OF FACTS AND AUTHORITIES IV

V.T.C.A., Bus. & C., § 26.01(a) and (b)(2), (4) and (6), expressly requires that contracts affecting real estate for longer than one year shall be in writing. Yet Respondents have not suggested an iota of evidence to show an agreement in writing binding Petitioners Lake Livingston Washateria, Inc. or Lake Livingston Washateria, Elijah Ratcliff, Proprietor.

Of related materiality hereto are the provisions of *Article XVI, §§ 50 and 51 of the Texas Constitution* that except the homestead from forced sale for the payments of all debts, except for the purchase money therefor, or a part of such purchase money; taxes due thereon; or for work and material used in constructing improvements thereon, when contracted in writing. *Fidelity Savings & Loan Association of Port Arthur v. Baldwin, 416 S.W. 2d 482 (1967).* *Vernon's Ann. Civ. St., Art. 3835 and 3836; Vernon's Ann. St. Const., Art. XVI §§ 50 and 51.*

As there was no contract in writing between either of Petitioners and Respondent Ed Hasty, it is well settled that

he could not defeat the homestead status, which had attached to the premises over a quarter century, and effect a forced or judicial sale. *Williamson v Kelly*, 444 S.W. 2d 311 (1969); *Hollifield v Hilton*, 515 S.W. 2d 717 (1974); Title 42, *United States Code*, Sections 1981, 1982 and 1983; *United States Code*, Const. Amend. V, XIII and XIV.

ARGUMENT - DISCUSSION OF FACTS AND AUTHORITIES V

A written contract form was in fact executed and signed by Respondent Ed Hasty as "salesman" and "representative" for Metcon Commercial Builders, Inc., the frenchised dealer for Respondent Metallic Building Company, binding James A. Stevens of Livingston, Texas, who was the predecessor of Appellant Lake Livingston Washateria, Inc., on the 25th day of February, A.D., 1971 (Tr. Items 4, 17, 17a and 17b). No steps were taken in performance of this agreement, and the original principal discontinued the venture. *Henry Newton, Inc., v H. Richards Company*, 385 S.W. 2d 893 (1965).

It was discovered later that Metcon Commercial Builders, Inc. had forfeited its corporate franchise and was no longer functioning. (Tr. Item 4 Paragraph IX, and Item 17, Paragraphs III, IV, V, VI, VII, VIII, IX and X).

Several months after the time had lapsed for initiating construction as contemplated by the agreement of February 25, 1971, Respondent Ed Hasty initiated construction of a building on the subject premises without seeking or obtaining the approval of anyone connected with ownership of the premises and proceeded to lay a crumbly slab and construct a building with a roof which leaked (Tr. Item 17, Paragraphs

IX, X, and XI).

It is noteworthy that no demand was ever made on Petitioners or any of their authorized representatives, to pay any construction costs, but Respondent Metallic Building Company refused Petitioner's request for an adjustment of contractual and construction framework, and Respondent Ed Hasty proceeded to intrude upon the premises in violation of the homestead sanctity and Civil Rights of Petitioners (Tr. Item 17, Paragraphs XI, XII, XVIII, XIX, XXI, and XXII). *Vernon's Ann. St., Art. 3833, 3835, and 3836; Vernon's Ann. St. Const., Art. XVI §§50 and 51; Vernon's Ann. Civ. St., Art. 5452, 5453, and 5469; V.T.C.A., Bus. & C., § 26.01; Title 42, United States Code, Sections 1981, 1982, and 1983; United States Code, Const. Amend. V, XIII and XIV.*

It is beyond dispute that Respondent Metallic Building Company was the supplier of building material for Metcon Commercial Builders, Inc., and Petitioners maintain that such Respondent is liable to Petitioners for damages to the extent of its participation in joint neglect to provide supplies resulting in damages to Petitioners. Fuller, *Basic Contract Law*, West Publishing Co., St. Paul, Minn. (1947), page 555; 17 *Tax Jur 2d* §§54 and 55; *Draper v Robinson*, 106 S.W. 2d 825 (1937); *Jordan v Cartwright*, 347 S.W. 2d 799 (1966); *Southeastern Chemical & Gas Corp. v Southeastern Pipe Line Co.*, 369 S.W. 2d 489 (1963).

ARGUMENT - DISCUSSION OF FACTS AND AUTHORITIES VI

As though blinded by a passion, Respondent Ed Hasty embarked upon a plan to deprive Petitioners of the subject

premises at Onalaska, Polk County, Texas consisting of the Southwestern one-half (½) of a three (3 ac.) acre tract of land originally conveyed by George Qualls of Onalaska, Polk County, Texas to J. W. Ratcliff, then of Onalaska, Polk County, Texas, as recorded at Volume 257, page 92, of the Polk County, Texas Deed Records (Tr. Item 1). *Houston Lumber Company v Wockenfass*, 386 S.W. 2d 330 (1965).

Such Respondent did not furnish Petitioners any kind of constitutional notice of his intention to claim title to the subject premises, but entered thereon through threats of violence while displaying firearms and other deadly weapons during April of 1973. *Vernon's Ann. Civ. St., Art. 3833, 3835, 3836, 5452, 5453 and 5469; Title 42, United States Code, Const. Amend XIV; United States v Waddell*, 112 U.S. 76 (1884); 28 L.Ed. 673; *United States v Price*, 383 U.S. 787 (1966) 16 L.Ed. 2d 267.

The admissions of Respondent Ed Hasty show that Petitioners were conveyed the subject premises by deed from J.W. and Clairette W. Ratcliff of Livingston, Polk County, Texas which is recorded at Volume 257, page 92, of the Polk County, Texas Deed Records (Tr. Items 17 and 17b); that the homestead character of the subject realty is reflected by the Records of the Tax Assessor-Collector of Polk County, Texas, Account No. 847-00-00800; and that Appellee Ed Hasty has never entered into an agreement of any kind with Appellants (Tr. Item 4 and 17, Paragraph I, II, V, VIII, IX and XVII), *Federal Rules Civ. Procedure, Rule 36, 28 U.S.C.*

The admissions of Respondent Ed Hasty show further that he has prevented the operation of Petitioner Lake Livingston

Washateria, Inc. since the month of May, 1973, to the present time, while he has never performed any service at the written or oral request of Petitioners. (Tr. Item 17, Paragraphs XIV and XVIII), *Federal Rules Civ. Procedure 36, 28 U.S.C.*

Also, such Respondent's admissions show that Petitioner Lake Livingston Washateria, Inc. was not in existence at the time the agreement such Respondent relies upon was executed, for such Petitioner was not incorporated or operating prior to the 6th day of May, A.D., 1971 (Tr. Item 17 and 17b, Paragraphs XV, XVI and XVII), *Federal Rules Civil Procedure Rule 36, 28 U.S.C.*

Respondent Ed Hasty has utilized counsel at all stages of the instant litigation, even through his procedural tactic do not reflect such, and the clear-cut objective of his conduct, whether upon advise of counsel or his own reactions, was to contravene the Civil Rights of Petitioners and deprive them of vested interests in realty (Tr. Item 1). *Vernon's Ann. Civ. St., Art. 6627; Title 18, United States Code, §242; Title 42, United States Code, Sections 1981, 1982 and 1983; United States Code, Const. Amend. XIV; United States v. Price*, 383 U.S. 787 (1966), 16 L.Ed. 2d 267.

ARGUMENT - DISCUSSION OF FACTS AND AUTHORITIES VII

Petitioner-Intervenor requested the United States District Court in a Motion for Leave to Appear to take judicial notice of its own docket and particularly Civil Action No. 75-H-1945, wherein Petitioner-Intervenor personally was petitioners, to clarify that Petitioners did not have a remedy, legal or equitable through the State courts of Texas (Tr. Items 15

and 16). 29 *Am Jur 2d* §§ 57 and 59; 31 *C.J.S. Evidence* §10; *Ackerman v United States* 178 F.2d 983 (1949), affirmed 340 U.S. 193, 95 L.Ed. 2d 207; *Lowe v McDonald*, 221 F.2d 228 (1955); *Fed. Rules Evid. Rule 201(a)*, 28 U.S.C.

The relevant State judiciary was adverse towards Petitioners to a degree that efforts to remove previous litigation in the applicable judicial district were initiated by Petitioner-Intervenor (See *Ratcliff v Texas*, Cr. No. 71-H-228, US DC SD TX, No. 9432, District Court of Polk County, Texas; No. 11,064, District Court of Montgomery County, Texas; No. 72-3127, U. S. Court of Appeals, Fifth Circuit No. 74-5595 and No. 75-208 U. S. Supreme Court. But of greater notoriety is the fact that the instant litigation involves a suit raising the issue of title to land which is required under State Law to be filed in the county where the land is situated. *Vernon's Ann. Civ. St., Art. 1995(14)*; *Christensen v Foster*, 297 S.W. 657 (1927); *Renwar Oil Company v Lancaster*, 276 S.W. 2d 774 (1955); Title 42, *United States Code, Sections 1981, 1982 and 1983*.

In addition to the element of a fair trial, the hostility of the judiciary was sufficiently overt that the probabilities were great Petitioners' witnesses and personnel would not be safe during litigation in the applicable judicial district nor would the law be fairly applied. Title 28, *United States Code, Sections 1443 and 1447(d)*; *Lefton v Hattiesburg*, 333 F.2d 280 (1964); *Manning v Ketchum*, 58 F.2d 948 (1932); *Sanders v Russel*, 401 F.2d 224 (1968); *Lewis v Kugler*, 446 F.2d 1343 (1971); *Martin v Duffie*, 463 F.2d 464 (1972).

Further evidence would have been available during the

course of the trial from witnesses if it appeared the records judicially noted were not adequate to establish the unavailability of a legal or equitable remedy in the State courts of Texas for Petitioners. *Federal Rules Civ. Procedure Rule 8(a)*, 28 U.S.C.; Title 28, *United States Code, Sections 1343, 1443 and 1447(d)*; Title 42, *United States Code, Sections 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1994 and 1995*; *United States Code, Const. Amend. V, VIII, XIV and XV*; *United States v Price*, 383 U. S. 787 (1966), 16 L.Ed. 2d 267.

ARGUMENT - DISCUSSION OF FACTS AND AUTHORITIES VIII

No genuine issue as to any material fact was presented by Respondent Ed Hasty controverting the pleadings (Tr. Items 1 and 16), admissions (Tr. Items 17 and 17b) and sworn statements (Tr. Items 7, 10 and excluded entry between Items 10 and 11 consisting of motion for summary judgment with the dated 11/10/73), in behalf of Petitioners, and such Petitioners who moved for summary judgment (Tr. Items 7, excluded entry between Items 10 and 11, 19 and 20), were entitled to default of judgment as a matter of law. *Federal Rules Civ. Proc., Rules 12(c), 55 and 56*, 28 U.S.C.; *Butler v Crockett Production Credit Association*, 303 S.W. 2d 464 (1957).

Rule 56(a), *Federal Rules of Civil Procedure*, provides that a party seeking to recover upon a claim may move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof. Section (c) of Rule 56 provides that the judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories

and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law, and each of the designated conditions Petitioners under the prevailing facts. *Beckman v Walter Kidde & Company*, 316 F.Supp. 1321 (1970), affirmed 451 F.2d 593 certiorari denied 408 U.S. 922; *Fleming v Simon*, 397 F.Supp.1202(1975); *Gonzales v Southern Methodist University*, 536 F.2d 1071 (1976); *Westlake v Lucas*, 537 F.2d 857 (1976).

CONCLUSION

The mandate herein of the Supreme Court of the United States should reverse the order of the United States Court of Appeals for the Fifth Circuit affirming the Final Judgment of the United States District Court and render judgment as a matter of law against Respondents and in favor of Petitioner Lake Livingston Washateria, Inc. for possession of the subject premises at Onalaska, Polk County, Texas; it should render judgment in favor of Petitioner-Intervenor for title to the subject premises as recorded at Volume 257, page 92, of the Polk County, Texas Deed Records as against all parties to the litigation; and it should direct the United States Court of Appeals for the Fifth Circuit to remand the proceeding to the United States District Court for the Southern District of Texas, Houston Division, for a hearing to determine the amount of damages to which Petitioners are entitled against Respondents jointly or severally. *Mitchell v Texas Gulf Sulphur Company*, 446 F.2d 90 (1971); *Eisler v Stritzler*, 535 F.2d 148 (1976).

February 28, 1978.

COUNSEL FOR APPELLANTS

Elijah W. Ratcliff
P.O. Box 862
Livingston, Texas 77351
Ph. 713-327-4948

CERTIFICATE OF SERVICE

Counsel for Petitioners certifies that triplicate copies of the foregoing Petition for Writ of Certiorari were served this 28th day of February, A.D., 1978, on the Attorneys of Record for Respondents by first class United States Mail addressed to Hon. Albert D. Downer, Attorney at Law, 2210 FM 1960 East, P.O. Box 90324, Houston, Texas 77090 and to Hon. Max Hendrick, III, Attorney at Law, 2100 First City National Bank Building, Houston, Texas 77002.

COUNSEL FOR PETITIONERS

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APPENDIX A

Final Judgment

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LAKE LIVINGSTON WASHATERIA, INC.
ET AL.

v.

CIVIL ACTION NO. 73-H-875

ED HASTY, ET AL.

FILED: Jul 29, 1977

FINAL JUDGMENT

For reasons set forth in the United States Magistrate's Memorandum and Recommendation, signed on July 27, 1977, it is ORDERED that said Recommendation be and the same is hereby adopted as the Court's Memorandum and Order.

It is therefore ORDERED, ADJUDGED and DECREED that Plaintiffs' action be DISMISSED.

The Clerk will enter this Final Judgment and provide counsel for all parties with true copies.

Done at Houston, Texas, this 29th day of July, 1977.

s/ John V. Singleton, Jr.
UNITED STATES DISTRICT JUDGE

Memorandum and Recommendation

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LAKE LIVINGSTON WASHATERIA,
INC., ET AL.

v. CIVIL ACTION NO. 73-H-875

ED HASTY, ET AL. Judge John V. Singleton, Jr.

FILED: Jul 27, 1977

Memorandum and Recommendation:

Plaintiffs have brought this action pursuant to 42 USC §1981, §1983, §1985 and §1988. The parties Defendant in this action are Ed Hasty and the Metallic Building Company.

The pleadings on file are extensive; however, their entire reconstruction will not be necessary in order to grasp the points at issue. It will be sufficient to elicit those facts material to the resolution of this recommendation.

In brief, the Plaintiffs in this action allege that the Defendant Ed Hasty has unlawfully interfered with Plaintiff's peaceable possession of his premises by engaging in continuous acts of trespass, spawning a correlative issue concerning title to the property. Plaintiffs allege that the above conduct was pursued under a pretense of authority, i.e., pursuant to an unlawful judgment in state court foreclosing a lien, with

Defendant Ed Hasty obtaining title through sale by sheriff. [For a delineation of actions taken on the property, see exhibits attached to Defendant's "Answer to Intervention and Amended Original Answer", filed on June 1, 1977, instrument#21.]

In *Copeland v. First Federal Savings and Loan Association of Lake County*, 414 F.2d 274 (5th Cir. 1969), on facts similar to the present case, the Court stated:

"Beyond vague references to the equal protection and due process clause, the complaint states no basis for federal jurisdiction or any cognizable grounds upon which relief sought might be granted."

Upon a review of the record, it is apparent that the trespass complained of is in actuality a complaint regarding the enforcement of a decree pursuant to a state court judgment. To allow Plaintiffs to prosecute this action would be to render this Court an appeals court for all displeased with a state trial court decree, without appellate review in the state.

With respect to Defendant Metallic Building Company, it is alleged that Metallic failed to comply with its obligation under a contract providing for the construction of a building on the property in question. With regard to this complaint, it is sufficient to state that no facts have been presented upon which relief can be granted under §1981, et seq.

Various motions have been filed by the Defendants in this action; however, in view of the foregoing, their determination need not be pursued.

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Accordingly, it is RECOMMENDED that Plaintiffs' action be DISMISSED for failure to state a claim upon which relief can be granted.

DONE at Houston, Texas, this 27th day of July, 1977.

s/ (Signature Illegible)
UNITED STATES MAGISTRATE

A-5

Order of the United States Court of Appeals

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 77 - 2769
Summary Calendar*

LAKE LIVINGSTON WASHATERIA, INC., ET AL.,
Plaintiff-Appellant

versus

ED HASTY,
Defendant-Appellee.

METALLIC BUILDING COMPANY,
Intervenor-Appellee

Appeal from the United States District Court for the
Southern District of Texas

(December 29, 1977)

BEFORE AINSWORTH, MORGAN and GEE, Circuit Judges.

PER CURIAM: AFFIRMED. See Local Rule 21¹

*Rule 18, 5 Cir., see Isbell Enterprises, Inc. v. Citizens Casualty Co. of New York, et al., 5 Cir., 1970, 431 F.2d 409.

1. See N.L.R.B. v. Amalgamated Clothing Workers of America, 5 Cir., 1970, 430 F.2d 966.

APPENDIX B

United States Constitutional Provisions

UNITED STATES CODE, CONST. AMEND. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

UNITED STATES CODE, CONST. AMEND. VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

UNITED STATES CODE, CONST. AMEND. XIII

1. Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

2. Congress shall have authority to enforce this article by appropriate legislation

UNITED STATES CODE, CONST. AMEND. XIV

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for the President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-president, or hold any office, civil or military, under the United States, or under any State, who having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the Unit-

ed States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two thirds of each house, remove such disability.

4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or empancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

UNITED STATES CODE, CONST. AMEND. XV

1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

2. The Congress shall have power to enforce this article by appropriate legislation.

United States Code Statutory Provisions

TITLE 28, UNITED STATES CODE, SECTION 1343 Civil rights and elective franchise

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for the injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in Section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in Section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

TITLE 28, UNITED STATES CODE, SECTION 1443 Civil rights cases.

Any of the following civil actions or criminal prosecutions,

commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the grounds that it would be inconsistent with such law.

TITLE 28, UNITED STATES CODE, SECTION 1446
Procedure for removal

(a) A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a verified petition containing a short and plain statement of the facts which entitle him or them to removal together with a copy of all process, pleadings and orders served upon him or them in such action.

(b) The petition for removal of a civil action or proceeding shall be filed within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

If the case stated by the initial pleading is not removable a petition for removal may be filed within thirty days after

receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order, or other paper from which it may first be ascertained that the case is one which is or has become removable.

(c) The petition for removal of a criminal prosecution may be filed at any time before trial.

(d) Each petition for removal of a civil action or proceeding, except a petition in behalf of the United States, shall be accompanied by a bond with good and sufficient surety conditioned that the defendant will pay all costs and disbursements incurred by reason of the removal proceedings should it be determined that the case was not removable or was improperly removed.

(e) Promptly after the filing of such petition and bond the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

(f) If the defendant or defendants are in actual custody on process issued by the State court, the district court shall issue its writ of habeas corpus, and the marshal shall thereupon take such defendant or defendants into his custody and deliver a copy of the writ to the clerk of such State court.

TITLE 28, UNITED STATES CODE, SECTION 1447
Procedure after removal generally

(a) In any case removed from a State court, the district

court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the State court or otherwise.

(b) It may require the petitioner to file with its clerk copies of all records and proceedings in such State court or may cause the same to be brought before it by writ of certiorari issued to such State court.

(c) If at any time before final judgment it appears that the case was removed improvidently and without jurisdiction, the district court shall remand the case, and may order the payment of just costs. A certified copy of the order of remand shall be mailed by its clerk to the clerk of the State court. The State court may thereupon proceed with such case.

(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to Section 1443 of this Title shall be reviewable by appeal or otherwise.

TITLE 28, UNITED STATES CODE, SECTION 1449,
State court record supplied

Where a party is entitled to copies of the records and proceedings in any suit or prosecution in a State court, to be used in any district court of the United States, and the clerk of such State court upon demand, and the payment or tender of the legal fees, fails to deliver certified copies, the district court may, on affidavit reciting such facts, direct such record to be supplied by affidavit or otherwise. Thereupon such proceedings, trial, and judgment may be had in such

district court, and all such process awarded, as if certified copies had been filed in the district court.

TITLE 42, UNITED STATES CODE, SECTION 1981
Equal rights under the law

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of parties.

TITLE 42, UNITED STATES CODE, SECTION 1982
Property rights of citizens

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

TITLE 42, UNITED STATES CODE, SECTION 1983
Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. (R.S. Sec. 1979).

TITLE 42, UNITED STATES CODE, SECTION 1984

Same; review of proceedings

All cases arising under the provisions of this Act in the courts of the United States shall be reviewable by the Supreme Court of the United States, without regard to the sum in controversy, under the same provisions and regulations as are provided by law for the review of other causes in said court.

TITLE 42, UNITED STATES CODE, SECTION 1985

Conspiracy to interfere with civil rights

(1) Preventing officer from performing duties. If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror. If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court or from testifying to any matter pending therein freely, fully, and in any such court, or to injure such party or witness in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more

persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the law;

(3) Depriving persons of rights or privileges. If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege, of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators. (R.S. Sec. 1980).

TITLE 42, UNITED STATES CODE, SECTION 1986
Same; action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in Section 1985 of this Title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representative, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if deceased shall have such action therefor, and may recover not exceeding \$5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action accrued. (R.S., Sec. 1981).

TITLE 42, UNITED STATES CODE, SECTION 1987
Prosecution of violation of certain laws

The United States attorneys, marshals, the commissioners appointed by the district and territorial courts, with power to arrest, imprison or bail offenders, and every other officer who is especially empowered by the President, are authorized and required at the expense of the United States to institute prosecutions against all persons violating any of the provisions of Section 1990 of this Title or of Sections 5506 to 5516 and 5518 to 5532 of the Revised Statutes, and to cause such persons to be arrested, and imprisoned or bailed for trial

before the court of the United States or the territorial court having cognizance of the offense. (R.S. Sec. 1982).

TITLE 42, UNITED STATES CODE, SECTION 1988
Proceedings in vindication of civil rights

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights and for vindication, shall be exercised and enforced in accordance with the laws of the United States so long as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. (R.S. Sec. 722).

TITLE 42, UNITED STATES CODE, SECTION 1989
Commissioners; appointment of persons to execute warrants

The district courts of the United States and the district courts of the Territories, from time to time, shall increase the number of commissioners, so as to afford a speedy and convenient means for the arrest and examination of persons charged with crimes referred to in Section 1987 of this Title; and such commissioners are authorized and required to exercise all the powers and duties conferred on them herein with

regard to such offenses in like manner as they are authorized by law to exercise with regard to other offenses against the laws of the United States. Said commissioners are empowered, within their respective counties, to appoint, in writing, under their hands, one or more suitable persons, from time to time, who shall execute all such warrants or other process as the commissioners may issue in the lawful performance of their duties, and the persons so appointed shall have authority to summon and call to their aid the bystanders or posse comitatus of the proper county, or such portion of the land or naval forces of the United States, or the militia, as may be necessary to the performance of the duty with which they are charged; and such warrants shall run and be executed anywhere in the State or Territory within which they are issued. (R.S. Sec. 1983, 1984).

TITLE 42, UNITED STATES CODE, SECTION 1990
Marshall to obey precepts; refusing to receive or execute process

Every marshal and deputy marshal shall obey and execute all warrants or other process, when directed to him issued under the provisions of Section 1989 of this Title. Every marshal and deputy marshal who refuses to receive any warrant or other process when tendered to him, issued in pursuance of the provisions of this section, or refuses or neglects to use all proper means diligently to execute the same, shall be liable to a fine in the sum of \$1,000, for the benefit of the party aggrieved thereby. (R.S. Sec. 1985, 5517).

TITLE 42, UNITED STATES CODE, SECTION 1991
Fees; persons appointed to execute process

Every person appointed to execute process under Section

1989 of this Title shall be entitled to a fee of \$5 for each party he may arrest and take before any commissioner with such other fees as may be deemed reasonable by the commissioner for any additional services necessarily performed by him, such as attending at the examination, keeping the prisoner in custody, and providing him with food and lodging during his detention, and until the final determination by the commissioner; such fees to be made up in conformity with the fees usually charged by the officers of the courts of justice within the proper district or county, as near as may be practicable, and paid out of the Treasury of the United States on the certificate of the judge of the district within which the arrest is made, and to be recoverable from the defendant as part of the judgment in case of conviction. (R.S. Sec. 1987).

TITLE 42, UNITED STATES CODE, SECTION 1992
Speedy trial

Whenever the President has reason to believe that offenses have been, or are likely to be committed against the provisions of Section 1990 of this Title or of Section 5506 to 5516 and 5518 to 5532 of the Revised Statutes, within any judicial district, it shall be lawful for him, in his discretion, to direct the judge, marshal, and United States attorney of such district to attend at such place within the district, and for such time as he may designate, for the purpose of the more speedy arrest and trial of persons so charged, and it shall be the duty of every judge or other officer, when any such requisition is received by him to attend at the place and for the time therein designated. (R.S. Section 1988).

TITLE 42, UNITED STATES CODE, SECTION 1993
(Repealed Sept. 9, 1957)

TITLE 42, UNITED STATES CODE, SECTION 1994
Peonage abolished

The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in any Territory or State of the United States; and all acts, laws, resolutions, orders, regulations, or usages of any Territory or State, which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any person as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void. (R.S. Section 1990).

TITLE 42, UNITED STATES CODE, SECTION 1995
Criminal contempt proceedings; penalties; trial by jury

In all cases of criminal contempt arising under the provisions of this Act, the accused, upon conviction, shall be punished by fine or imprisonment or both; *Provided however*, That in case the accused is a natural person the fine to be paid shall not exceed the term of six months: *Provided further*, That in any such proceeding for criminal contempt, at the discretion of the judge, the accused may be tried with or without a jury: *Provided further, however*, That in the event such proceeding for criminal contempt be tried before a judge without a jury and the sentence of the court upon conviction is a fine in excess of the sum of \$300 or imprisonment in excess of forty-five days, the accused in said proceed-

ing, upon demand therefor, shall be entitled to a trial de novo before a jury, which shall conform as near as may be to the practice in other criminal cases.

This section shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice nor to the misbehavior, misconduct, or disobedience, of any officer of the court in respect to the writs, orders, or process of the court.

Nor shall anything herein or in any other provision of law be construed to deprive courts of their power, by civil contempt proceedings, without a jury, to secure compliance with or to prevent obstruction of, as distinguished from punishment for violations of, any lawful writ, process, order, rule, decree, or command of the court in accordance with the prevailing usages of law and equity, including the power of detention.

FEDERAL RULES CIV. PROC., RULE 8
General Rules of Pleading

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

(b) **Defenses; Form of Denials.** A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceeding pleading, he may make his denials as specific denials of designated averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, he may do so by general denial subject to the obligations set forth in Rule 11.

(c) **Affirmative Defenses.** In pleading to a preceeding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) **Effect of Failure to Deny.** Averments in a pleading

to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) **Pleading to be Concise and Direct; Consistency.**

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal, equitable, or maritime grounds. All statements shall be made subject to the obligations set forth in Rule 11.

(f) **Construction of Pleadings.** All pleadings shall be so construed as to do substantial justice.

FEDERAL RULES CIV. PROC., RULE 12

Defenses and Objections-When and How Presented - By Pleading or Motion-Motion for Judgment on Pleadings

(a) **When Presented.** A defendant shall serve his answer within 20 days after the service of the summons and com-

plaint upon him, except when service is made under Rule 4(e) and a different time is prescribed in the order of the court under the statute of the United States or in the statute or rule of court of the state. A party served with a pleading stating a cross-claim against him shall serve an answer thereto within 20 days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The United States or an officer or agency thereof shall serve an answer to the complaint or to a cross-claim, or a reply to a counterclaim, within 60 days after the service upon the United States attorney of the pleading in which the claim is asserted. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; (2) if the court grants a motion for a more definite statement the responsive pleading shall be served with 10 days after the service of the more definite statement.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A

motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such motion by Rule 56.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such motion by Rule 56.

(d) Preliminary Hearings. The defenses specifically enumerated (1)-(7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleadings. The motion shall point out the defects complained of and the details desired. If a motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within twenty days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of Defenses in Motion. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to him. If a party makes a motion under this rule but omits therefrom any defense or objection then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

(h) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, im-

proper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

FEDERAL RULES CIV. PROC., RULE 33 Interrogatories to Parties

(a) Availability; Procedures for Use. Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each interrogatory shall be answered separately and fully

in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

(b) Scope; Use at Trial. Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-trial conference or other later time.

(c) Option to Produce Business Records. Where the answers to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of

deriving or ascertaining the answer the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

FEDERAL RULES CIV. PROC., RULE 36 Requests for Admissions

(a) Request for Admission. A party may serve upon any other party a written request for admissions, for the purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact including the genuineness of any documents described in the request. Copies of the document shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon any other party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but unless the

court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon him. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why he cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of the rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(b) Effect of Admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pre-trial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

FEDERAL RULES CIV. PROC., RULE 37

Failure to Make Discovery: Sanctions

(a) Motion for Order Compelling Discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) Appropriate Court. An application for an order to a party may be made to the court in which the action is pending, or, on matters relating to a deposition, to the court in the district where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the court in the district where the deposition is being taken.

(2) Motion. If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)

(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion pursuant to Rule 26(c).

(3) Evasive or Incomplete Answer. For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) Award of Expenses of Motion. If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If a motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in

opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to Comply With Order.

(1) Sanctions by Court in District Where Deposition is Taken. If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the district in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) Sanction by Court in Which Action is Pending. If a party or an officer, director, or managing agent of a party or person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or

prohibiting him from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination.

(E) Where a party has failed to comply with an order under Rule 35(a) requiring him to produce another for examination, such orders as are listed in paragraphs(A), (B), and (C) of this subdivision, unless the party failing to comply shows that he is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that circumstances make an award of expenses unjust.

(c) Expenses on Failure to Admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admission thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court

for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (4) there was other good reason for the failure to admit.

(d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 20(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take his deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objection-

able unless the party failing to act has applied for a protective order as provided by Rule 26(c).

(e) Subpoena of Persons in Foreign Country. A subpoena may be issued as provided in Title 28, U.S.C., §1783, under the circumstances and conditions therein stated.

(f) Expenses Against United States. Except to the extent permitted by statute, expenses and fees may not be awarded against the United States under this rule.

FEDERAL RULES CIV. PROC., RULE 55. Default

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default.

(b) Judgment. Judgment by default may be entered as follows:

(1) By the Clerk. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if he has been defaulted for failure to appear and if he is not an infant or incompetent person.

(2) By the Court. In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant

or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, he (or, if appearing by representative, his representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the United States.

(c) Setting Aside Default. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

(d) Plaintiffs, Counterclaimants, Cross-Claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counter-claim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

(e) Judgment Against the United States. No judgment by default shall be entered against the United States or an officer or agency thereof unless the claimant establishes his claim or right to relief by evidence satisfactory to the court.

FEDERAL RULES CIV. PROC., RULE 56.
Summary Judgment

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case not Fully Adjudicated on Motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the

court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) When Affidavits are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential

to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

FED. RULES EVID. RULE 201, 28 U.S.C.
Judicial Notice of Adjudicative Facts

(a) Scope of rule. This rule governs only judicial notice of adjudicative facts.

(b) Kinds of facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When discretionary. A court may take judicial notice, whether requested or not.

(d) When mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) Opportunity to be heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of taking notice. Judicial notice may be taken at any stage of the proceeding.

(g) Instructing jury. In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

VERNON'S ANN. ST. CONST., ART. XVI, § 50.

The homestead of a family shall be, and is hereby, protected from forced sale for the payment of all debts, except for the purchase money thereof, or a part of such purchase money, the taxes due thereon, or for work and material used in constructing improvements thereon and in this last case only when the work and material are contracted for in writing, with the consent of the wife given in the same manner as is required in making a sale and conveyance of the homestead; nor shall the owner, if a married man, sell the homestead with the consent of the wife, given in such manner as may be prescribed by law. No mortgage, trust deed or other lien on the homestead shall be valid except for the purchase money therefor, or improvements made thereon as hereinbefore provided, whether such mortgage or trust deed or other lien shall have been created by the husband alone and together with his wife, and all pretended sales of the home-

stead involving conditions of defeasance shall be void.

VERNON'S ANN. ST. CONST., ART. XVI, § 51

The homestead not in a town or city shall consist of not more than 200 acres of land which may be in one or more parcels with the improvements thereon; the homestead in a city, town or village, shall consist of a lot or lots, not to exceed in value \$10,000 at the time of their designation as homestead, without reference to the value of any improvements thereon; provided that the same shall be used for the purpose of a home, or as a place to exercise the calling or business of the head of the family; provided, also, that any temporary renting of the homestead shall not change the character of the same, when no other homestead has been acquired.

VERNON'S ANN. CIV. ST., ART. 3833 Homestead

(a) If it is used for the purpose of a home, or as a place to exercise the calling or business to provide for a family or a single, adult person, not a constituent of a family, the homestead of a family or a single, adult person, not a constituent of a family, shall consist of:

(1) for a family, not more than two hundred acres, which may be in one or more parcels, with improvements thereon, if not in a city, town, or village; or

(2) for a single, adult person, not a constituent of a family, not more than one hundred acres, which may be in one or more parcels, with the improvements thereon, if not in a city, town, or village; or

(3) for a family or a single, adult person, not a constituent of a family, a lot or lots not to exceed in value ten thousand dollars at the time of their designation as a homestead, without reference to the value of any improvements thereon, if in a city, town, or village.

(b) Temporary renting of the homestead shall not change its homestead character when no other homestead has been acquired.

VERNON'S ANN. CIV. ST., ART. 3835

Interests in land exempt from satisfaction of liabilities

The homestead of a family or a single, adult person, not a constituent of a family, and a lot or lots held for the purposes of sepulchre of a family or a single, adult person, not a constituent of a family, are exempt from attachment, execution and every type of forced sale for the payment of debts, except for encumbrances properly fixed thereon.

VERNON'S ANN. CIV. ST., ART 3836

Personal property exempt from satisfaction of liabilities

(a) Personal property (not to exceed an aggregate fair market value of \$15,000.00 for each single, adult person, not a constituent of a family, or \$30,000.00 for a family) is exempt from attachment, execution and every type of seizure for the satisfaction of liabilities, except for encumbrances properly fixed thereon, if included among the following:

(1) furnishings of a home, including family heirlooms, and provisions for consumption;

(2) all of the following which are reasonably necessary for the family or single, adult person, not a constituent of a family: implements of farming or ranching; tools, equipment, apparatus (including a boat), and books used in any trade or profession; wearing apparel; two firearms and athletic and sporting equipment;

(3) any two of the following categories of means of travel: two animals from the following kinds with a saddle and bridle for each: horses, colts, mules, and donkeys; a bicycle or motorcycle; a wagon, cart, or dray, with harness reasonably necessary for its use; an automobile or station wagon; a truck cab; a truck trailer; a camper-truck; a truck; a pick-up truck;

(4) livestock and fowl not to exceed the following in number and forage on hand reasonably necessary for their consumption: 5 cows and their calves, one breeding-age bull, 20 hogs, 20 sheep, 20 goats, 50 chickens, 30 turkeys, 30 ducks, 30 geese, 30 guineas;

(5) a dog, cat, and other household pets;

(6) the cash surrender value of any life insurance policy in force for more than two years to the extent that a member or members of the family of the insured person or a dependent or dependents of a single, adult person, not a constituent of a family, is beneficiary thereof;

(7) current wages for personal services.

(b) The use of any property not exempt from attachment, execution and every type of forced sale for the payment of

debts to acquire property described in Subsection (a) of this article, or any interest therein, to make improvements thereon, or to pay indebtedness thereon with the intent to defraud, delay or hinder a creditor or other interested person from obtaining that to which he is or may become entitled shall not cause the property or interest so acquired, or improvements made, to be exempt from seizure for the satisfaction of liabilities under Subsection (a) of this article.

(c) If any property or any interest therein or improvement is acquired by discharge of an encumbrance held by another, a person defrauded, delayed, or hindered by such acquisition as provided in Subsection (b) of this article is subrogated to the rights of the prior encumbrancer.

(d) A creditor must assert his claim under Subsection (b) and (c) of this article within four years of the transaction of which he complains. A person with an unliquidated or contingent demand must assert his claim under Subsection (b) and (c) of this article within one year after his demand is reduced to judgment.

V.A.T.C., Bus. & C., § 26.01

(a) A promise or agreement described in Subsection (b) of this section is not enforceable unless the promise or agreement, or a memorandum of it, is

(1) in writing; and

(2) signed by the person to be charged with the promise agreement or by someone lawfully authorized to sign for him.

(b) Subsection (a) of this section applies to

(1) A promise by an executor or administrator to answer out of his own estate for any debt or damage due from his testator or intestate.

(2) A promise by one person to answer for the debt, default, or miscarriage of another person.

(3) An agreement made on consideration of marriage.

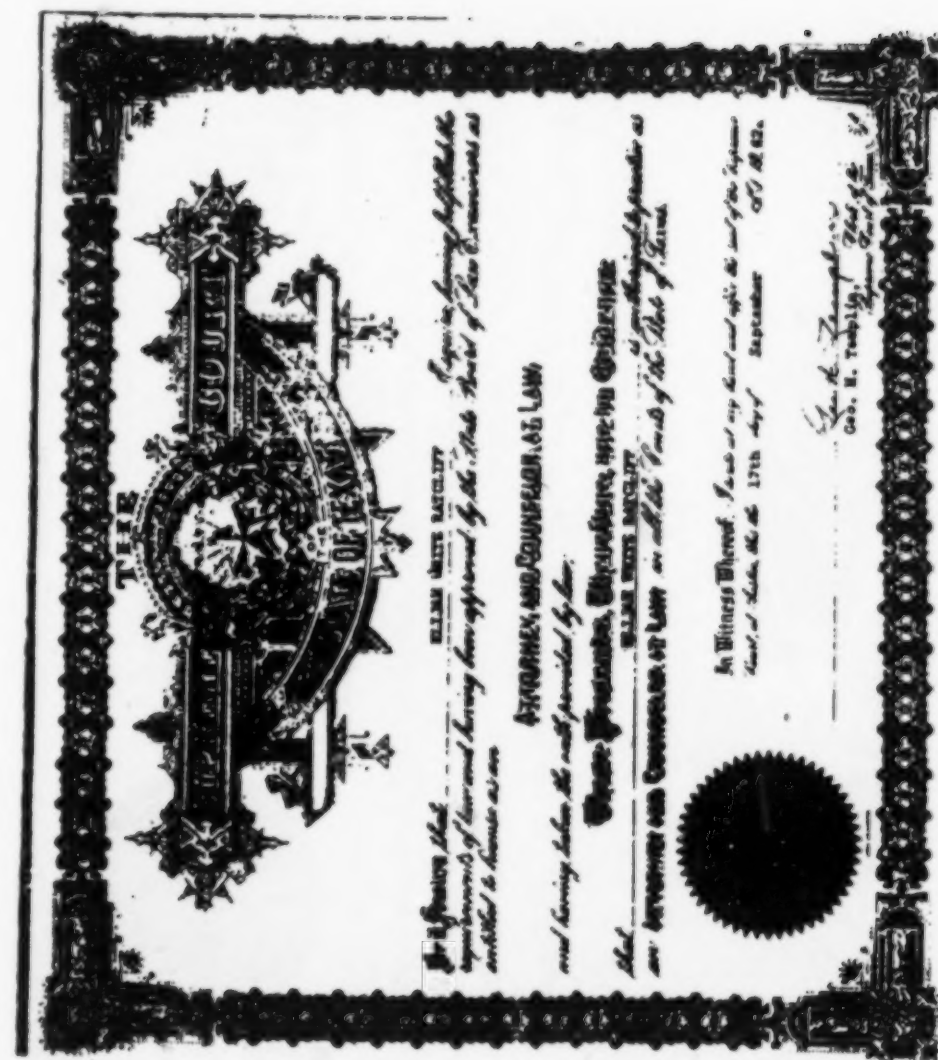
(4) A contract for the sale of real estate.

(5) A lease of real estate for a term longer than one year.

(6) An agreement which is not to be performed within one year from the date of making the agreement. (R.S. Art. 3995)

(7) A promise or agreement to pay a commission for the sale or purchase of

- (A) an oil or gas mining lease;
- (B) an oil or gas royalty;
- (C) minerals; or
- (D) a mineral interest.



THE UNITED STATES OF AMERICA

SOUTHERN DISTRICT OF TEXAS

I, V. BAILEY THOMAS, Clerk of the United States District Court for the Southern District of Texas, do hereby certify that

JOHN H. BATHCLIFF

was duly admitted and qualified as an Attorney and Counselor, Solicitor, Notary Public, and Broker of said District Court on the 23rd day of JUNE, 1933.

In testimony whereof, I have set my hand and affix the seal of said Court at my office in HOUSTON, TEXAS, in the Southern District of Texas, this 23rd day of JUNE, 1933.

V. BAILEY THOMAS
Clerk

Lois Bloch
Sagely Clerk

The American Judicature Society

Certifies that

ELIJAH BATHCLIFF

has been since 1926 a voting member and a supporter of its program

To Promote an Efficient Administration of Justice

Robert P. Patterson
Executive Director

W. D. P. D. D.
Chairman of the Board

Robert P. Patterson
President

SUPREME COURT OF TEXAS
ATTORNEY IN THE SUPREME COURT OF TEXAS FOR
JUNE 1, 1972 TO MAY 31, 1973

ELIJAH W RATCLIFF

#16559000

5819 THRUSH DR
HOUSTON TX 77033

Elijah W. Ratcliff 20114
SIGNATURE

BACK OF CARD

THIS IS TO CERTIFY THAT THE ATTORNEY WHOSE NAME APPEARS ON THE REVERSE SIDE OF THIS CARD IS DULY ENROLLED AS AN ATTORNEY IN THE SUPREME COURT OF TEXAS AND HAS COMPLIED WITH THE PROVISIONS OF THE STATE BAR ACT AND IS A MEMBER OF THE STATE BAR IN GOOD STANDING.

Garson R. Jackson
CLERK SUPREME COURT OF TEXAS